



## 12 CFR Part 1102

[Docket No. AS22-01]

### Appraisal Subcommittee; Appraiser Regulation; Temporary Waiver Requests

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) proposes to amend existing rules of practice and procedure governing temporary waiver proceedings, which were promulgated in 1992 pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI). The proposed amendments are intended to provide for greater transparency and clarity on temporary waiver proceedings.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION in the FEDERAL REGISTER]**.

**ADDRESSES:** Commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. You may submit comments, identified by Docket Number AS22-01, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Click on the “Support” button on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *E-Mail:* [webmaster@asc.gov](mailto:webmaster@asc.gov). Include the docket number in the subject line of the message.
- *Mail:* Address to Appraisal Subcommittee, Attn: Lori Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.

- *Hand Delivery/Courier:* 1325 G Street NW, Suite 500, Washington, DC 20005.

In general, the ASC will enter all comments received into the docket and publish those comments on the Regulations.gov website without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. At the close of the comment period, all public comments will also be made available on the ASC's website at <https://www.asc.gov> (follow link in "What's New") as submitted, unless modified for technical reasons.

You may review comments and other related materials that pertain to this rulemaking action by the following method:

- **Viewing Comments Electronically:** Go to <https://www.regulations.gov>. Enter "Docket ID AS22-01" in the Search box and click "Search." Click on the "Support" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

#### **FOR FURTHER INFORMATION CONTACT:**

Lori Schuster, Management and Program Analyst, [lori@asc.gov](mailto:lori@asc.gov), (202) 595-7578, or Alice M. Ritter, General Counsel, [alice@asc.gov](mailto:alice@asc.gov), (202) 595-7577, ASC, 1325 G Street NW, Suite 500, Washington, DC 20005.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The purpose of Title XI<sup>1</sup> is “to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions [FRTs] are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.”<sup>2</sup>

Title XI requires that real property appraisals performed in connection with FRTs be performed in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP)<sup>3</sup> as promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation. The Federal financial institutions regulatory agencies’ appraisal regulations require appraisals for FRTs to meet these minimum appraisal standards as evidenced by USPAP.<sup>4</sup> Title XI also requires that certified and licensed appraisers meet the minimum qualification criteria as set forth in *The Real Property Appraiser Qualification Criteria* (AQB Criteria) issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.<sup>5</sup> The State appraiser regulatory agencies enforce these federal minimum requirements for credentialed appraisers in their respective States and are subject to federal oversight by the ASC.<sup>6</sup>

Section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis, subject to approval of the FFIEC:

any requirement relating to certification or licensing of a person to perform appraisals under [Title XI] if the [ASC] or a [State appraiser regulatory

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<sup>1</sup> The ASC was established by Title XI. The ASC Board consists of seven members. Five members are designated by the heads of the FFIEC federal member agencies (Board of Governors of the Federal Reserve System [Board], Bureau of Consumer Financial Protection [Bureau], Federal Deposit Insurance Corporation [FDIC], Office of the Comptroller of the Currency [OCC], and National Credit Union Administration [NCUA]). The other two members are designated by the heads of the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA).

<sup>2</sup> Title XI § 1101. *See also*, 12 U.S.C. 3331.

<sup>3</sup> Title XI § 1109(1). *See also*, 12 U.S.C. 3339 (1).

<sup>4</sup> Title XI § 1121 (4), 12 U.S.C. 3350, implemented by the Office of the Comptroller of the Currency: 12 CFR 34.44; Federal Reserve Board: 12 CFR 225.64; Federal Deposit Insurance Corporation: 12 CFR 323.4; and National Credit Union Administration: 12 CFR 722.4.

<sup>5</sup> Title XI § 1116(a) and (c). *See also*, 12 U.S.C. 3345 (a) and (c).

<sup>6</sup> Title XI § 1118. *See also*, 12 U.S.C. 3347. “State appraiser regulatory agencies” are referred to in the proposed rule as “State Appraisal Agencies.”

agency] makes a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with [FRTs] in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals. A waiver terminates when the [ASC] determines that such significant delays have been eliminated.<sup>7</sup>

Congress intended that the ASC exercise this waiver authority “cautiously.”<sup>8</sup>

The ASC published rules of practice and procedure governing temporary waiver proceedings in 1992.<sup>9</sup> The ASC has ordered temporary waiver relief on two occasions. The first was for the Commonwealth of the Northern Mariana Islands in February 1993 (preceded by an interim order for relief issued in December 1992). The second was in August 2019 for the State of North Dakota (which was extended in part for one additional year in 2020).

Under the existing rules of practice and procedure, when the ASC receives a request from a State appraiser regulatory agency that meets the requirements set forth in 12 CFR § 1102.2, *Requirements for requests*, including a written duly authorized determination that there is a scarcity of certified or licensed appraisers leading to significant delays in obtaining appraisals in FRTs, the request is published promptly in the *Federal Register* for comment. In the absence of such a written determination, the State appraiser regulatory agency must ask the ASC for such a determination. When the ASC receives a submission pursuant to 12 CFR § 1102.3, *Other requests and information submissions*, the ASC has the discretion to determine whether or not to initiate a temporary waiver proceeding. If the ASC makes a determination to initiate a temporary waiver proceeding, the ASC will promptly publish notice of the proceeding in the *Federal Register*. Within 45 calendar days of the date of publication in the *Federal Register*, the existing rules provide that the ASC will grant or deny a waiver, in whole or in part, by Order. The ASC must seek FFIEC approval if the waiver is

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<sup>7</sup> Title XI § 1119(b). *See also*, 12 U.S.C. 3348(b).

<sup>8</sup> House Comm. on Banking, Finance and Urban Affairs, Report Together with Additional Supplemental, Minority, Individual, and Dissenting Views, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, H.R. Rep. No. 101-54 Part 1, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess., at 482-83.

<sup>9</sup> 12 CFR part 1102, subpart A.

granted, and the waiver cannot take effect unless approved by the FFIEC.

Application of the existing rules of practice and procedure in the present day led the ASC to recognize there may be advantages in proposing revisions to the existing rules to define terms and provide greater clarity on the proceedings. The ASC also believes there may be advantages in proposing revisions to the timeframes in the existing rules of practice and procedure (as established in 1992 to accommodate newly formed State appraiser regulatory agencies) to be more conducive to deliberation by the ASC or FFIEC. Accordingly, the ASC proposes to amend the existing rules of practice and procedure as set forth below. The ASC created a flow chart for temporary waiver proceedings as set forth in this notice of proposed rulemaking:

<https://www.asc.gov/Documents/FederalRegisterDocuments/Temporary%20Waiver%20Flow%20Chart%20for%20NPRM%20-%20Docket%20No.%20AS22-01.pdf>

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The ASC is also proposing interpretations of several of the terms used in § 1119(b) of Title XI. These interpretations are proposed to be included in the “definitions” section of the rule.

Though neither procedural rules nor published agency interpretations of their statutory authority require notice and comment under the Administrative Procedure Act (APA),<sup>10</sup> the ASC is voluntarily submitting this proposed rule and interpretations for public comment in order to seek feedback from interested parties.

## **II. The Proposed Rule**

### ***Authority, purpose, and scope.***

Proposed § 1102.1 would clarify the purpose and scope of the processes available for ASC consideration of temporary waiver relief by making a clear distinction between: (1) a request from a State appraiser regulatory agency accompanied by a written determination, referred to in the proposed rule as a “Request for Temporary Waiver”; and (2) information received from other persons or entities (which could include a State appraiser regulatory agency) referred to in the

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<sup>10</sup> 5 U.S.C. 553(b).

proposed rule as a “Petition.” As subsequent sections in the proposed amended rule clarify, the procedure followed varies depending on whether the ASC has received a Request for Temporary Waiver or a Petition requesting that the ASC initiate a temporary waiver proceeding.

The basis for this distinction is in the statute itself. Section 1119(b) of Title XI authorizes the ASC to grant a temporary waiver only when the ASC or a State appraiser regulatory agency has made the statutorily required written determination that: (1) there is a scarcity of certified or licensed appraisers to perform appraisals in connection with FRTs in a State, or in any geographical political subdivision of a State; and (2) such scarcity is leading to significant delays in the performance of such appraisals for FRTs.<sup>11</sup> Accordingly, the proposed rules seek to clarify the procedural differences in processing a Request for Temporary Waiver accompanied by a written determination as compared to a Petition requesting the ASC exercise its discretion to initiate a temporary waiver proceeding.

### ***Definitions.***

Proposed § 1102.2 would establish definitions for the following terms:

*Federally related transaction (FRT).* Proposed § 1102.2(a) proposes to define *federally related transaction (FRT)* to mean any real estate-related financial transaction which: (a) a Federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser under the interagency appraisal rules. [(Title XI § 1121(4), 12 U.S.C. 3350), implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].

*Performance of appraisals.* Proposed § 1102.2(b) proposes to define *performance of appraisals* to mean that the appraisal service requested of an appraiser has been provided to the lender or appraisal management company (AMC).

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<sup>11</sup> Title XI § 1119(b). *See also*, 12 U.S.C. 3348(b).

*Petition.* Proposed § 1102.2(c) proposes to define *Petition* to mean information submitted to the ASC by the Federal financial institutions regulatory agencies, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency (defined below), asking the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, and that meets the requirements, as determined by the ASC, set forth in proposed § 1102.4.

*Request for Temporary Waiver.* Proposed § 1102.2(d) proposes to define *Request for Temporary Waiver* to mean information submitted to the ASC with a written determination from a State Appraisal Agency (defined below) requesting a temporary waiver that meets the requirements, as determined by the ASC, set forth in proposed § 1102.3.

*Scarcity of certified or licensed appraisers.* Proposed § 1102.2(e) proposes to define *scarcity of certified or licensed appraisers* to mean the number of active certified or licensed appraisers within a State or a specified geographical political subdivision is insufficient to meet the demand for appraisal services and such appraisers are difficult to retain.

*Significant delays in the performance of appraisals.* Proposed § 1102.2(f) proposes to define *significant delays in the performance of appraisals* to mean delays that are substantially out of the ordinary when compared to performance of appraisals for similarly situated federally related transactions based on factors such as geographic location (*e.g.*, rural versus urban) and assignment type, and the delay is not the result of intervening circumstances outside the appraiser's control or brought about by the appraiser's client (*e.g.*, inability to access the subject property).

*State Appraisal Agency.* Proposed § 1102.2(g) proposes to define *State Appraisal Agency* to mean the State appraiser certifying and licensing agency.<sup>12</sup>

*Temporary waiver.* Proposed § 1102.2(h) proposes to define *Temporary waiver* to mean a waiver of any or all credentialing requirements for persons eligible to perform appraisals for

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<sup>12</sup> Title XI § 1121(1). *See also*, 12 U.S.C. 3350(1).

FRTs; if granted, a temporary waiver does not waive the requirement for a USPAP-compliant appraisal.<sup>13</sup>

***Request for Temporary Waiver.***

Proposed § 1102.3 clarifies: who can file a Request for Temporary Waiver; what a Request for Temporary Waiver should contain; ASC review of a Request for Temporary Waiver for purposes of determining sufficiency of the document's content and receipt by the ASC; and what is required in the event a Request for Temporary Waiver is not deemed to be received, and thereby is either denied or referred back to the State Appraisal Agency.

Proposed § 1102.3(a) states that the State Appraisal Agency for the State in which temporary waiver relief is sought may file a Request for Temporary Waiver as distinguished from a Petition from other persons or entities as proposed in § 1102.4. A State Appraisal Agency may alternatively submit a Petition as set forth in proposed § 1102.4. The ASC believes this is consistent with the intent of the existing rules.<sup>14</sup>

Proposed § 1102.3(b) states that a Request for Temporary Waiver will not be deemed to have been received by the ASC unless it fully and accurately sets out:

- (1) a written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State;
- (2) the requirement(s) of State law from which relief is being sought;

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<sup>13</sup> The regulations of the Federal financial institutions regulatory agencies (agencies' appraisal regulations) require appraisals for FRTs to meet minimum appraisal standards including conformance to generally accepted appraisal standards as evidenced by USPAP. The ASC cannot waive the requirement for USPAP-compliant appraisals where applicable under the agencies' appraisal regulations. Therefore, when a waiver is in effect, appraisals that comply with the agencies' appraisal regulations (including conformance with USPAP) would still be required when applicable under those regulations, but they could be performed by persons who are not credentialed. (*See* 12 CFR § 34.44(a); 12 CFR § 225.64(a); 12 CFR § 323.4(a); and 12 CFR § 722.4(a)).

<sup>14</sup> "The rules provide persons other than the State appraisal regulatory agencies ('State agencies') with the opportunity to submit informational submissions to the ASC. They also may request that the ASC exercise its discretionary authority to provide temporary waiver relief. The ASC will consider such submissions and requests in determining whether it should initiate a temporary waiver proceeding." 57 *Federal Register* 10980 (April 1992).



- (3) the nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- (4) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- (5) how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and
- (6) meaningful suggestions and recommendations for remedying the situation.

The existing rules state that in the absence of a written determination by the State Appraisal Agency, it must ask the ASC for such a determination. That language is removed from this proposed subsection for the reason that if the ASC were to make such a determination when asked to do so by a State Appraisal Agency, it would be processed as an ASC Order initiating a temporary waiver proceeding pursuant to proposed § 1102.5(a).

The proposed amendments to this subsection seek to provide clarity on information that should be included in a Request for Temporary Waiver and to remove redundancy from that information. For example, the existing rules, in addition to the above, ask for “[a] description of all significant problems currently being encountered in efforts to comply with [T]itle XI” which would be captured in the information sought in proposed § 1102.3(b). The proposed amendments also modify the requirement for a State Appraisal Agency to provide “a specific plan for expeditiously alleviating the scarcity and service delays” to “meaningful suggestions and recommendations for remedying the situation” recognizing that the situation creating scarcity and delay may be completely outside the control of the State Appraisal Agency.

The proposed amendments include the phrase “supporting documentation, statistical or otherwise verifiable.” This is intended to provide clarification as to what a Request for Temporary Waiver should include to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified

class of FRTs for either a portion of, or the entire State, and what the ASC will consider in determining receipt (*see* proposed § 1102.3(c) below). A Request for Temporary Waiver should include clear and specific data to support a claim that there is a scarcity of appraisers leading to significant delays in the performance of covered appraisals. The data supporting such a claim may vary from location to location and situation to situation. Information about the following could assist the ASC in reviewing a Request for Temporary Waiver:

1. Geography – location(s) of the scarcity leading to significant delay.
2. Transactions – types of FRTs impacted (*i.e.*, property and transaction type(s) and transaction amount(s)).
3. Time – length of time for waiver requested.

Proposed § 1102.3(b) includes that a Request for Temporary Waiver address how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted.

Proposed § 1102.3(c) is intended to clarify that a Request for Temporary Waiver shall be deemed received for purposes of publication in the *Federal Register* for notice and comment if the ASC determines that the information submitted meets the requirements of § 1102.3(b).

Proposed § 1102.3(d) sets forth what is required in the event a Request for Temporary Waiver is not deemed to be received, and thereby is either denied or referred back to the State Appraisal Agency. In either case, written notice from the ASC would be required with an explanation for such a determination.

***Petition requesting the ASC initiate a temporary waiver proceeding.***

Proposed § 1102.4 clarifies: who can file a Petition requesting that the ASC exercise its discretionary authority to issue an Order, thereby initiating a temporary waiver proceeding; what a Petition should contain; the need to forward a copy of a Petition to the State Appraisal Agency of the impacted State; what the ASC may review for purposes of determining whether the Petition may be processed for further action; what is required in the event a Petition does not

meet the requirements of § 1102.4(b), *Contents of a Petition*, and thereby is either denied or referred back to the petitioner; and what further action may be taken.

Proposed § 1102.4(a) states that a Petition may be filed by the Federal financial institutions regulatory agencies, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency.

Proposed § 1102.4(b) states that a Petition should include:

- (1) information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State; and
- (2) the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

A Petition may also include meaningful suggestions and recommendations for remedying the situation.

The existing rules generally request the same information from State Appraisal Agencies as they do from other persons or institutions seeking consideration of temporary waiver relief (with the exception of “a specific plan to alleviate scarcity and service delays” which is unique to State Appraisal Agencies). The proposed amendments to this subsection seek to provide clarity on information that should be included in a Petition while easing the expectation that a Petition contain the specificity of a Request for Temporary Waiver from a State Appraisal Agency.

The proposed amendments include the phrase “supporting documentation, statistical or otherwise verifiable.” This is intended to clarify what a Petition should include to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the

entire State, and what the ASC will consider in determining whether to process a Petition for further action (*see* proposed § 1102.4(d) below).

Proposed § 1102.4(c) clarifies the existing requirement for a petitioner to provide a copy of their Petition to the State Appraisal Agency, unless the party filing the Petition is the State Appraisal Agency.

Proposed § 1102.4(d) provides that a Petition may be processed for further action if the ASC determines that the information submitted meets the requirements of proposed § 1102.4(b) and that further action should be taken to determine whether a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

Proposed § 1102.4(e) sets forth what is required in the event a Petition does not meet the requirements of § 1102.4(b), *Contents of a Petition*, and thereby is either denied or referred back to the petitioner. In either case, written notice from the ASC would be required with an explanation for such a determination.

Proposed § 1102.4(f) states that if a Petition is processed for further action, the ASC may initially refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for evaluation and further study, or the ASC may take further action without referring a Petition to the State Appraisal Agency. Alternatively, a Petition may be denied or referred back to the petitioner for further action.

Proposed § 1102.4(g) states that in the event the State Appraisal Agency opts to conduct evaluation and further study on a Petition, the State Appraisal Agency may issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State. Assuming the State Appraisal Agency has addressed the items that would be included in a Request for Temporary Waiver as set forth in proposed § 1102.3(b), the Petition would now be subject to the procedures and requirements for a Request for Temporary Waiver.

The State Appraisal Agency could alternatively recommend that the ASC take no further action on the Petition, or moreover decline to conduct evaluation and further study on a Petition. In either case, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding.

Proposed § 1102.5 clarifies that an Order initiating a temporary waiver proceeding may be in response to a Petition or may be initiated by the ASC without a Petition having been submitted. In either event, such an Order would include consideration of certain items that would be addressed in a Request for Temporary Waiver. (*See e.g., § 1102.3(b)(2)-(6), Contents and Receipt of a Request for Temporary Waiver*). If such an Order is issued, the ASC shall publish a *Federal Register* notice in accordance with § 1102.6(b). This is consistent with the existing rules of practice and procedure.

***Notice and comment.***

Proposed § 1102.6 does not vary in substance from the existing rules of practice and procedure, § 1102.4, *Notice and comment*, which provides for a 30-day notice and comment period on either a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding.

***ASC determination.***

Proposed § 1102.7 would expand the existing 45-day deadline, which commences on the date of publication above, for the ASC to make a determination. With respect to recent requests for temporary waivers, or other information submissions requesting the ASC initiate a proceeding, the 45-day turnaround limited the time available to process and evaluate information submitted, including comments received during the notice and comment period.

The ASC believes that the 45-day time period was imposed in 1992 primarily because States were still in the process of setting up State appraiser regulatory programs, and absent a temporary waiver, could have been left without any means to provide appraisals for FRTs. That

is not the case today. Even absent a temporary waiver, a State would likely be able to continue to provide appraisals, especially given the use of temporary practice permits and reciprocity.

The ASC proposes to expand the timeframe for an ASC determination, on either a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding, from 45 calendar days to 90 calendar days from the date of publication in the *Federal Register* to allow sufficient time for thorough processing and consideration. Proposed § 1102.7 also seeks to clarify that in the event the ASC issues an Order approving a temporary waiver, which is only effective upon FFIEC approval of the waiver, that the FFIEC consideration of the waiver would not be subject to the ASC's proposed 90-day timeframe for a determination.

The existing rules of practice and procedure allow the ASC to issue an interim approval Order simultaneously with a publication for notice and comment, and apply when the ASC determines that an emergency exists. A waiver approved by such an Order also requires approval by the FFIEC. For the reasons stated above, the ASC believes the existing rules were intended to accommodate nascent State Programs, which is not applicable today. States now have options to cope with an emergency that were not available when the existing rules of practice and procedure were finalized. Additionally, the ASC believes that notice and comment is critical to thorough processing of a Request for Temporary Waiver or a Petition. Therefore, as proposed, § 1102.6 would eliminate the interim Order from the rules of practice and procedure.

***Waiver extension.***

Proposed § 1102.8 does not vary in substance from the existing rules of practice and procedure, § 1102.6, *Waiver extension*.

***Waiver termination.***

Proposed § 1102.9 would clarify the distinction between mandatory waiver termination versus discretionary waiver termination. Section 1119(b) of Title XI states, “[t]he waiver terminates when the [ASC] determines that such significant delays have been eliminated.” Therefore, proposed § 1102.9 would require termination in the event of such a finding by the

ASC. Proposed § 1102.9 would retain the provision for a discretionary termination in the event the ASC finds that the terms and conditions of the waiver Order are not being satisfied and the procedure for the ASC's publication in the *Federal Register* for notice and comment in the case of discretionary waiver termination, which does not vary in substance from the existing rules of practice and procedure, § 1102.7, *Waiver termination*. In the absence of further ASC action to the contrary, the finding of a discretionary waiver termination automatically shall become final 21 calendar days after the close of the comment period.

### **III. Request for Comment**

The ASC requests comment on all aspects of the proposed amendments to the existing rules of practice and procedure governing temporary waiver proceedings.

### **IV. Regulatory Requirements**

The ASC has concluded that, if finalized, the proposed amendments to the procedural rule would, like the current rule, constitute a rule of agency organization, procedure, or practice, and that they would therefore be exempt from the notice-and-comment rulemaking requirements of the APA.<sup>15</sup> For the same reason, the proposed amendments would not be subject to the 30-day delayed effective date for substantive rules under the APA.<sup>16</sup> Moreover, agency interpretations of terms used in their statutory authority are exempt from the notice and comment requirement. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>17</sup>

### **Paperwork Reduction Act**

There is no collection of information that would be required by this proposed rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The Paperwork Reduction Act of 1995<sup>18</sup> (PRA) states that no agency may conduct or sponsor, nor is the

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<sup>15</sup> 5 U.S.C. 553(b).

<sup>16</sup> 5 U.S.C. 553(d).

<sup>17</sup> 5 U.S.C. 603(a) and 604(a).

<sup>18</sup> 44 U.S.C. 3501–3521.

respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The ASC has reviewed this notice of proposed rulemaking and determined that it does not contain any information collection requirements subject to the PRA. Accordingly, no submissions to OMB will be made with respect to this proposed rule.

### **Unfunded Mandates Reform Act of 1995 Determination**

This proposed rule if finalized would not have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed rule would amend the existing rule to provide definitions of terms and greater clarity on the proceedings for a temporary waiver. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.* is not required.

### **List of Subjects**

12 CFR Part 1102

Administrative practice and procedure, Appraisers, Appraisal Management Company Registry Fees, Banks, Banking, Freedom of information, Mortgages, Reporting and recordkeeping requirements.

### **Authority and Issuance**

For the reasons set forth in the preamble, the ASC proposes to amend 12 CFR Part 1102 as follows:

### **PART 1102—APPRAISER REGULATION**

1. The authority citation for part 1102, subpart A continues to read as follows:

**Authority:** 12 U.S.C. 3348(b).

2. Revise part 1102, subpart A to read as follows:

#### **Subpart A—Temporary Waiver Requests**

Sec.

1102.1            Authority, purpose, and scope.



- 1102.2 Definitions.
- 1102.3 Request for Temporary Waiver.
- 1102.4 Petition requesting the ASC initiate a temporary waiver proceeding.
- 1102.5 Order initiating a temporary waiver proceeding.
- 1102.6 Notice and comment.
- 1102.7 ASC determination.
- 1102.8 Waiver extension.
- 1102.9 Waiver termination.

### **§ 1102.1 Authority, purpose and scope.**

(a) *Authority.* This subpart is issued under § 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI; 12 U.S.C. 3348(b)).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing temporary waiver proceedings under § 1119(b) of Title XI (12 U.S.C. 3348(b)). These procedures apply whenever a Request for Temporary Waiver is submitted to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) for a temporary waiver of any requirement relating to State certification or licensing (credentialing requirements) of persons eligible to perform appraisals for federally related transactions (FRTs) under Title XI. These procedures also apply in the event the ASC receives a Petition requesting the ASC initiate a temporary waiver proceeding. This subpart also contains the ASC's interpretations of terms used in § 1119(b) of Title XI.

### **§ 1102.2 Definitions.**

For purposes of this subpart:

- (a) *Federally related transaction (FRT)* means any real estate-related financial transaction which: (a) a Federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser under the interagency appraisal rules. [(Title XI § 1121(4), 12 U.S.C. 3350), implemented by the Office of the Comptroller of the

Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a)].

*(b) Performance of appraisals* means the appraisal service requested of an appraiser is provided to the lender or appraisal management company (AMC).

*(c) Petition* means information submitted to the ASC by the Federal financial institutions regulatory agencies, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency, asking the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, and that meets the requirements, as determined by the ASC, set forth in § 1102.4.

*(d) Request for Temporary Waiver* means information submitted to the ASC by a State Appraisal Agency with a written determination requesting a temporary waiver that meets the requirements, as determined by the ASC, set forth in § 1102.3.

*(e) Scarcity of certified or licensed appraisers* means the number of active certified or licensed appraisers within a State or a specified geographical political subdivision is insufficient to meet the demand for appraisal services and such appraisers are difficult to retain.

*(f) Significant delays in the performance of appraisals* means delays that are substantially out of the ordinary when compared to performance of appraisals for similarly situated FRTs based on factors such as geographic location (*e.g.*, rural versus urban) and assignment type, and the delay is not the result of intervening circumstances outside the appraiser's control or brought about by the appraiser's client (*e.g.*, inability to access the subject property).

*(g) State Appraisal Agency* means the State appraiser certifying and licensing agency.<sup>19</sup>

*(h) Temporary waiver* means a waiver of any or all credentialing requirements for persons eligible to perform appraisals for FRTs; if granted, a temporary waiver does not waive the

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<sup>19</sup> Title XI § 1121(1). *See also*, 12 U.S.C. 3350(1).

requirement for a *Uniform Standards of Professional Appraisal Practice* (USPAP)-compliant appraisal.

**§ 1102.3 Request for Temporary Waiver.**

(a) *Who can file a Request for Temporary Waiver.* The State Appraisal Agency for the State in which the temporary waiver relief is sought may file a Request for Temporary Waiver.

(b) *Contents and Receipt of a Request for Temporary Waiver.* A Request for Temporary Waiver from a State Appraisal Agency will not be deemed received by the ASC unless it fully and accurately sets out:

(1) A written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State;

(2) The requirement(s) of State law from which relief is being sought;

(3) The nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

(4) The extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

(5) How complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and

(6) Meaningful suggestions and recommendations for remedying the situation.

(c) *Receipt of a Request for Temporary Waiver.* A Request for Temporary Waiver shall be deemed received for purposes of publication in the *Federal Register* for notice and comment if the ASC determines that the information submitted meets the requirements of § 1102.3(b), *Contents and Receipt of a Request for Temporary Waiver*, to support that a scarcity of appraisers

exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

(d) *Deny or Refer back.* In the event the Request for Temporary Waiver is not deemed received, it may be denied in its entirety or referred back to the State Appraisal Agency for further action. In either case, the ASC shall provide written notice to the State Appraisal Agency providing an explanation for the determination.

**§ 1102.4 Petition requesting the ASC initiate a temporary waiver proceeding.**

(a) *Who can file a Petition requesting the ASC initiate a temporary waiver proceeding.* The Federal financial institutions regulatory agencies, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency, may petition the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding.

(b) *Contents of a Petition.* (1) A Petition should include:

(i) Information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State; and

(ii) The extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

(2) A Petition may also include meaningful suggestions and recommendations for remedying the situation.

(c) *Copy of Petition to State Appraisal Agency.* In the case of a Petition from a party other than a State Appraisal Agency, the party must promptly provide a copy of its Petition to the State Appraisal Agency.

(d) *ASC review of a Petition.* A Petition may be processed for further action if the ASC determines that the information submitted meets the requirements of § 1102.4(b), *Contents of a Petition*, and that further action should be taken to determine whether a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

(e) *Deny or Refer back.* In the event a Petition does not meet the requirements of § 1102.4(b), *Contents of a Petition*, it may be denied in its entirety or referred back to the petitioner for further action. In either event, the ASC shall provide written notice to the petitioner providing an explanation for the determination.

(f) *Further action on a Petition.* If the ASC determines that a Petition should be processed for further action, at its discretion the ASC may:

(1) Refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for further evaluation and study, to include items that would be addressed in a Request for Temporary Waiver (*see* § 1102.3(b), *Contents and Receipt of a Request for Temporary Waiver*); or

(2) Take further action without referring the Petition to the State Appraisal Agency.

(g) *State Appraisal Agency Action.*

(1) In the event the State Appraisal Agency opts to conduct further evaluation and study on a Petition, the State Appraisal Agency may:

(i) Issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State (or request that the ASC issue such a written determination), in which case, the procedures and requirements of § 1102.3 and 1102.6(a) shall apply; or

(ii) Recommend that the ASC take no further action.

(2) In the event the State Appraisal Agency either recommends no further action or declines to conduct further evaluation and study on a Petition, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding in accordance with § 1102.5(a).

#### **§ 1102.5 Order initiating a temporary waiver proceeding.**

The ASC may exercise discretion in determining whether to issue an Order initiating a temporary waiver proceeding in response to a Petition, or alternatively, the ASC may exercise discretion to initiate a temporary waiver proceeding on its own initiative without a Petition being submitted.

In either event, such an Order would include consideration of certain items that would be addressed in a Request for Temporary Waiver. (*See e.g., § 1102.3(b)(2) through (6), Contents and Receipt of a Request for Temporary Waiver*). If such an Order is issued, the ASC shall publish a *Federal Register* notice in accordance with § 1102.6(b).

#### **§ 1102.6 Notice and comment.**

The ASC shall publish promptly in the *Federal Register* a notice respecting:

- (a) A received Request for Temporary Waiver (*see* §1102.3(c)); or
- (b) An ASC Order initiating a temporary waiver proceeding (*see* § 1102.5).

The notice of a received Request for Temporary Waiver or ASC Order initiating a temporary waiver proceeding shall contain a concise statement of the nature and basis for the action and shall give interested persons 30 calendar days from its publication in which to submit written data, views, and arguments.

#### **§ 1102.7 ASC determination.**

(a) *Order by the ASC.* Within 90 calendar days of the date of publication of the notice in the *Federal Register*, the ASC, by Order, shall either grant or deny a waiver, in whole or in part, and upon specified terms and conditions, including provisions for waiver termination. The Order shall be published in the *Federal Register*, which in the case of an Order approving a waiver, shall only be published after FFIEC approval of the waiver (*see* paragraph (b) of this section).

Such Order shall respond to comments received from interested members of the public and shall provide the reasons for the ASC's finding(s).

(b) *Approval by the FFIEC.* Any ASC Order approving a waiver shall be effective only upon FFIEC approval of the waiver. FFIEC consideration of a waiver is not subject to the ASC's 90-day timeframe for a determination.

#### **§ 1102.8 Waiver extension.**

The ASC may initiate an extension of temporary waiver relief and shall follow §§ 1102.6, 1102.7 and 1102.9 of this subpart. A State Appraisal Agency also may seek an extension of temporary waiver relief by forwarding an additional written Request for Temporary Waiver to the ASC. A request for an extension from a State Appraisal Agency shall be subject to all the requirements of this subpart.

#### **§ 1102.9 Waiver termination.**

(a) *Mandatory waiver termination.* The ASC shall terminate a temporary waiver Order when the ASC determines that significant delays in the performance of appraisals by certified or licensed appraisers no longer exist.

(b) *Discretionary waiver termination.* The ASC at any time may terminate a waiver Order on the finding that the terms and conditions of the waiver Order are not being satisfied. In the case of a discretionary waiver termination, the ASC shall publish a finding of waiver termination promptly in the *Federal Register*, giving interested persons no less than 30 calendar days from publication in which to submit written data, views, and arguments. In the absence of further ASC action to the contrary, the finding of discretionary waiver termination automatically shall become final 21 calendar days after the close of the comment period.

By the Appraisal Subcommittee,

Dated: January 6, 2022.

Tim Segerson,  
Chairman.

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